Filed 9/25/12 P. v. Poolsiri CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. PIYANUT POOLSIRI, Defendant and Appellant.	B238740 (Los Angeles County Super. Ct. No. LA067215)

APPEAL from a judgment of the Superior Court of Los Angeles County, Joseph A. Brandolino, Judge. Affirmed.

G. Martin Velez, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Mary Sanchez and Jonathan M. Krauss, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Piyanut Poolsiri appeals her conviction of possessing a counterfeit seal (Pen. Code, § 472),[1] receiving stolen property (§ 496d, subd. (a)), and attempted grand theft of personal property (§§ 664, 487, subd. (a)).

At trial, the prosecutor introduced statements defendant made to a police officer before her arrest. Because the officer had not admonished defendant pursuant to *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*) before obtaining her statements, she contends the trial court erred in admitting them. We conclude a *Miranda* advisement was not required because defendant was not in custody, and thus we affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

I. Underlying Facts

Glenn Diaz is the owner of a 1998 Honda CRV, license number 4CXE382. On February 11, 2011, he parked the car across the street from his apartment on Parthenia Avenue at 7:00 or 7:30 p.m. When he returned about 45 minutes later, the car was gone. He reported it stolen, which activated the LoJack system installed on the car.

The same evening, at about 7:30 p.m., Miguel Lopez saw a Craigslist posting offering a Honda CRV for sale for $4,800. He called the telephone number indicated in the posting and spoke to the man who answered. The man told Lopez the car belonged to his wife, who was visiting friends in the San Fernando Valley. The man said his wife could show Lopez the car that evening at an address on Sepulveda Boulevard.

Lopez, with his wife and 14-year-old daughter, drove to the location at about 9:00 that evening. When they arrived, defendant was waiting outside a car. She was holding a purse and a pink slip. She asked if Lopez was looking for a car, and he said he was. She handed him the key. He asked whether she could do better than the listed price, and she said he would have to discuss that with her husband. Lopez used the key to turn on the car and then began inspecting it with a flashlight.

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[1] All further undesignated statutory references are to the Penal Code.

While Lopez was inspecting the car, police officers arrived and shined spotlights on Lopez and defendant. Defendant said, "Something is wrong." Lopez asked, "This is your car?" and she answered, "No, I'm buying it, too." She sounded afraid. The officers approached with their guns drawn and instructed defendant and the three members of the Lopez family to put their hands on a nearby wall. All four were briefly detained.

The police interviewed Lopez, who said defendant had offered to sell him a car. Lopez said defendant flagged him down and asked, "Are you here to buy a car?" Officers also spoke to defendant, asking her, "What was going on; what she was doing there; basically, her side of the story." Defendant said she was there to buy the vehicle. She said her boyfriend had dropped her off and a "skinny, Asian guy" came, gave her the pink slip and the keys, and said he would be back. She said the vehicle's owner lived a few buildings away from where the vehicle was parked, but she could not identify the alleged owner's name or address.

After the police interviewed Lopez, his wife, and his daughter, they apologized and asked Lopez to use his cell phone to call the man he had spoken to about the car. Lopez did, putting the call on speaker. When the man answered, Lopez asked if they could make a better deal on the car. The man answered, "Well, it's my wife's car. So she's — she can tell you the decision about the car because that's her car." At the police's request, Lopez then asked the man if he could come to the location to discuss the matter further. The man said, "You know what? Let me talk to my wife." Lopez handed the phone to defendant, who said, "Something is wrong with the — with the car." The police told Lopez to end the conversation, so Lopez said, "I'm losing you," and hung up.

The arresting officers recovered from defendant a handbag that contained a single Honda key and a counterfeit pink slip.

II. *Miranda* Hearing

Defendant was charged by information with receiving a counterfeit certificate of title, receiving stolen property (the Honda CRV), and attempted grand theft of personal property (money) from Miguel Lopez.

Prior to trial, the defense moved to suppress defendant's crime scene statements on the grounds that they were not voluntary and did not satisfy the requirements of *Miranda.* In opposition to the motion, the prosecution called California Highway Patrol (CHP) Officer Oscar Serrano, who testified as follows.

On February 11, 2011, Officer Serrano was assigned to the west San Fernando Valley. He and his partner went to Sepulveda Boulevard and Weddington Street to back up another unit that had received a stolen vehicle report. Serrano was in uniform in a marked CHP patrol vehicle. When he and his partner arrived at the scene, they saw a Honda CRV surrounded by four individuals: a Hispanic man, woman, and child, and defendant. The CRV's license plates matched those of the stolen vehicle.

Serrano and his partner drew their weapons and initiated a felony stop by ordering the four individuals to put their hands on a wall where the officers could see them. The officers then handcuffed the suspects, searched them for weapons, and separated defendant from the other three suspects, whom the officers believed were a family. Once officers determined that none of the four suspects was carrying a weapon, the officers returned their weapons to their holsters and removed the handcuffs. Serrano asked defendant, "What are you doing here? What's going on?" Defendant said she was there to view the Honda CRV because she was interested in buying it. Serrano asked, "Are you sure you're here to buy the vehicle, not that you're selling it for somebody else?" She said, "No." She then told Serrano that she "had been dropped off at the location and she had received the keys and other documentation, we later found, from a — and I quote — 'a skinny, Asian guy a few blocks away — a few buildings away' from where the location from where the car was." Serrano obtained this statement from defendant "[n]ot very long" after officers' initial contact with her—not more than "a couple of minutes." Serrano spoke to defendant in English, and she answered in English. Defendant appeared to understand Serrano's questions. She did not ask for an interpreter. Serrano asked defendant three or four questions, and the exchange took "maybe a minute, maybe two."

Serrano said that while he and other officers questioned defendant and the Lopezes, "everyone at that moment was still detained because, obviously, we don't know

. . . what's going on. We — everyone at that location is not arrested, but they are detained until we can figure out what's going on. . . . She was at the instance where information was still required from her, thus she . . . wasn't arrested, but no, when you're detained, you're not free to leave, but you're not in handcuffs, and we're not telling you, 'I'm placing you under arrest.'"

Four officers were present when the felony stop was initiated. As the officers approached the suspects, another unit with two officers arrived.

After hearing Officer Serrano's testimony, the court denied defendant's motion to suppress. The court determined that defendant's statements were voluntary and that the officers were not required to give a *Miranda* warning: "[T]his really was the equivalent of a *Terry*[2] stop. I understand that weapons were drawn and people were cuffed because of the situation. You know, the officers were concerned for their safety, and that, to me, is absolutely justified. And then as soon as they figure out what's going on, they did unhandcuff people or at least figure out there was no threat. . . . [S]o what they're doing is they're trying to figure out what's going on. And do they — so does that keep it from being an interrogation for purposes of *Miranda*? In other words, it's a *Terry* stop to try and figure out what's going on. And are they really asking questions that they know are going to be incriminating to the defendant, or are they really just trying to figure out what's going on? They don't know for sure that these statements are going to be incriminating. Does that take it out of *Miranda*?

"And the second issue is, is the defendant in custody for purposes of *Miranda*? Because the defendant can be in custody, even though [she's] not formally arrested. I don't think the defendant was formally arrested. But was she in custody?"

After hearing argument from counsel, the court ruled as follows:

"Here's what the court looks at: The [s]ite or location of the interrogation, whether the defendant has been formally arrested, whether the objective indicia of arrest

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[2] *Terry v. Ohio* (1968) 392 U.S. 1.

are present, the lengths of the detention, the ratio of officers to suspect, the demeanor of the officer, including the nature of the questioning.

"I think when you consider all those it's a close call, as far as custody goes, but I . . . think I'm going to find that this barely satisfies that it's not custody for purposes of *Miranda*. It's close, but — only because of the original approach of the officers, but my decision is based on the fact that, once the officers clarified that there's no weapons involved, the defendant is not in handcuffs, they're in a public street, there are four officers, but there's four individuals involved, even though another unit shows up later. . . . It does not appear the officer was, you know, acting in a commanding manner. It seems like it was a normal conversation. The defendant seemed to understand. And, you know, there [were] no other indicia of formal arrest.

"So I think it's very close, but . . . I will find that it's not detention for purposes of *Miranda*. It's not custody for purposes of *Miranda*.

"But, to me, the main issue is also the fact . . . the officers really were just . . . asking about what's going on, and I think, in that type of situation — you have cases that indicate that, in those types of situations, especially given the facts and circumstances and, again, . . . you focus on the specific circumstances of every case, but, in this case, the officers really were asking questions that . . . that were not necessarily going to result in incriminating answers. They just wanted to know why these people were around the car. And in this type of situation . . . the officers aren't . . . intending to elicit incriminating statements. So, in that situation, it may not . . . be interrogation for purposes of *Miranda*.

"So based on those two determinations, I'm going to find that the statements are not in violation of *Miranda*."

III. Trial and Sentence

A jury convicted defendant of all three counts alleged in the information. The court suspended the imposition of sentence and placed defendant on formal probation for three years. Defendant was ordered to serve 210 days in county jail and make restitution to Diaz in the amount of $290.80. Defendant timely appealed.

DISCUSSION

Defendant contends the trial court erred when it admitted evidence of her pre-arrest statements because officers did not advise her of her *Miranda* rights before eliciting the statements. Thus, the issue is whether the officers were required to provide *Miranda* warnings before questioning defendant. *Miranda* warnings are required "'as soon as a suspect's freedom of action is curtailed to a "degree associated with formal arrest."' (*Berkemer v. McCarty* (1984) 468 U.S. 420, 440 (*Berkemer*).) This determination presents a mixed question of law and fact. (*People v. Ochoa* (1998) 19 Cal.4th 353, 402.) We apply a deferential substantial evidence standard to the trial court's factual findings, but independently determine whether the interrogation was custodial. (*Ibid.*)" (*People v. Pilster* (2006) 138 Cal.App.4th 1395, 1403 (*Pilster*).)

"Custody determinations are resolved by an objective standard: Would a reasonable person interpret the restraints used by the police as tantamount to a formal arrest? (*Berkemer, supra*, 468 U.S. at p. 442; *People v. Aguilera* (1996) 51 Cal.App.4th 1151, 1161.) [Fn. omitted.] The totality of the circumstances surrounding an incident must be considered as a whole. (*People v. Boyer* (1989) 48 Cal.3d 247, 272, disapproved on another ground in *People v. Stansbury* (1995) 9 Cal.4th 824, 830, fn. 1.) Although no one factor is controlling, the following circumstances should be considered: '(1) [W]hether the suspect has been formally arrested; (2) absent formal arrest, the length of the detention; (3) the location; (4) the ratio of officers to suspects; and (5) the demeanor of the officer, including the nature of the questioning.' (*People v. Forster* (1994) 29 Cal.App.4th 1746, 1753.) Additional factors are whether the suspect agreed to the interview and was informed he or she could terminate the questioning, whether police informed the person he or she was considered a witness or suspect, whether there were restrictions on the suspect's freedom of movement during the interview, and whether police officers dominated and controlled the interrogation or were 'aggressive, confrontational, and/or accusatory,' whether they pressured the suspect, and whether the

suspect was arrested at the conclusion of the interview. (*Aguilera*, at p. 1162.)" (*Pilster*, *supra*, at pp. 1403-1404.)

The court applied these factors in *In re Joseph R.* (1998) 65 Cal.App.4th 954 (*Joseph R.*) (cited with approval in *People v. Thomas* (2011) 51 Cal.4th 449, 477-478), to conclude that a minor was not in custody when he was questioned by police officers. In *Joseph R.*, a witness saw two boys throwing rocks at a bus. The witness told a police officer that one of the boys was wearing a plaid shirt, and he pointed the officer to the house the boys entered. As the officer approached the home, he saw two boys through a window, one (Joseph) wearing a plaid shirt. When the mother of one of the boys came to the door, the officer told her of his suspicions and asked to speak with the boys, who then came out onto the porch. The officer told Joseph that a witness had seen him throw a rock at a bus; Joseph said he had no idea what the officer was talking about. The officer then placed Joseph in handcuffs and told him to sit in the back of the patrol car. The officer left Joseph sitting in the car for about five minutes. When the officer returned, he took Joseph out of the car and began asking questions about the incident. Early in the conversation, the officer suggested it was "'a pretty stupid thing'" to throw rocks at a bus, and Joseph conceded, "'Yeah, it was a pretty dumb thing for us to do.'" (*Joseph R.*, *supra*, at pp. 956-957.) The prosecutor used that admission against Joseph at his jurisdictional hearing. (*Ibid*.)

Joseph contended his statement should not have been admitted because he was questioned without having been given *Miranda* warnings, after having been handcuffed and placed in the back of a patrol car. He argued that he reasonably believed he was in custody. (*Joseph R.*, *supra*, 65 Cal.App.4th at pp. 956-957.) The court disagreed: "Even at the point Joseph was cuffed and placed in the back seat of the patrol car, the record reveals no evidence to indicate he was ever told he was going to be taken to the station house or, for that matter, taken anywhere at all. Rather, because the time during which Joseph was restrained was extremely short, it seems likely he was handcuffed and placed in the police car merely so the officer could maintain control of the minor while he carried on another portion of his investigation. [Fn. omitted.]" (*Id*. at p. 958.) Further,

when the officer began questioning Joseph, Joseph "had been released from the temporary restraints he experienced while the officer tended to another aspect of his investigation. By the minor's own admission, he was never told he was going to be arrested, but he *was* told he need not answer the officer's questions. The entire encounter lasted only about 15 or 20 minutes. After the interrogation was completed, the officers left the scene alone." (*Id*. at p. 961.) The court concluded that, under these circumstances, the trial court did not err by admitting Joseph's statement acknowledging his involvement in the crime. (*Ibid*.)

The Supreme Court reached a similar result in *People v. Thomas*, *supra*, 51 Cal.4th 449 (*Thomas*). There, a young woman was found murdered in a high school classroom. An officer was told that the defendant had discovered the victim's body and that he had been seen washing his hands in a bathroom where blood was discovered. An officer asked the defendant to accompany him to his patrol vehicle. The officer told defendant that "'he was a witness in this crime and that we had detectives en route and due to the severity of the crime the detectives would probably be handling the interviews of the primary witnesses and that he was going to be detained.'" (*Id*. at p. 476.) The officer placed the defendant in the back of the patrol car and closed the doors, which could not be opened from the inside. After the defendant had been in the car for about 20 minutes, a deputy let him out of the car and asked the defendant to tell him "'what had happened that day.'" (*Ibid*.) The deputy spoke to the defendant for 20 to 30 minutes, and then returned him to the back seat of the patrol car and went to interview another witness. (*Id*. at pp. 475-476.)

On appeal, the defendant contended that the trial court should not have admitted the statements he made at the crime scene because officers had not advised him of his *Miranda* rights before interviewing him. (*Thomas*, *supra*, 51 Cal.4th at p. 476.) The court disagreed. After quoting *Joseph R.* at length, it held that the defendant's statements were properly admitted because defendant "was not in custody for purposes of *Miranda* when he was questioned." (*Id*. at p. 478.)

The present case is analogous to *Joseph R.* and *Thomas*. Like the defendants in those cases, defendant here was not restrained when she was questioned and she had not been told she was under arrest. Further, the tenor of the questions the officers asked her—"What are you doing here? What's going on?"—were, as in those cases, sufficiently "general" and "investigatory" (*People v. Lopez* (1985) 163 Cal.App.3d 602, 608, fn. 4) as to make clear to defendant that the officers were not arresting her, but were simply trying to determine what had happened. And, as in *Joseph R.* and *Thomas*, the encounter between defendant and the police was brief—by Officer Serrano's estimate, he asked defendant only three or four questions, and the exchange took "maybe a minute, maybe two."

Defendant emphasizes the officers' "substantial show of force," noting that officers illuminated the scene with spotlights and red lights from two patrol cars, approached defendant with guns drawn, and placed defendant and the Lopez family in handcuffs. The officers' initial show of force does not alter our analysis. It was reasonable under the circumstances, and the officers reholstered their guns and removed the handcuffs as soon as they determined that none of the four potential suspects was armed. As in *Joseph R.* and *Thomas*, the brief show of force would not have communicated to a reasonable person that he or she was in custody.

Other factors relevant to a *Miranda* determination also support our determination that defendant was not in custody when she initially spoke to the police. As we have discussed, defendant was not formally arrested and she was detained for only a short time. Further, the detention occurred in public, on a well-traveled street, permitting passersby to witness the interaction between defendant and officers. As our Supreme Court has said, "This exposure to public view both reduces the ability of an unscrupulous policeman to use illegitimate means to elicit self-incriminating statements and diminishes the motorist's fear that, if he does not cooperate, he will be subjected to abuse." (*Berkemer, supra*, 468 U.S. at p. 438.) And, although there were four to six officers on the scene, there were four potential suspects, and thus the ratio of officers to suspects was never more than one and a half to one.

Defendant contends the present case is analogous to *People v. Taylor* (1986) 178 Cal.App.3d 217 (*Taylor*). In *Taylor*, officers saw the defendant leaving a residence subject to a "stake out." Several patrol cars and a police helicopter pursued him at high speed with red lights and sirens activated for approximately a mile and a half. Eventually, the patrol cars and helicopters stopped the defendant, and an officer, with his gun drawn, ordered him to step forward. Officers searched the nearby area and found a woman's bracelet and glove, car keys, and flashlight. An officer showed the items to the defendant, who said, "'I don't know why, I just lost my head, when I threw them away, I just lost my head.'" (*Id*. at p. 222.) The defendant was arrested. The bracelet later was identified as having been taken during a burglary that had occurred earlier that month. (*Id*. at pp. 222-223.)

On appeal, the defendant contended the trial court erroneously denied his motion to suppress evidence, urging that his statement to the officer, on which the officers and trial court relied to establish probable cause to arrest, was obtained unlawfully because he had not been given a *Miranda* warning. (*Taylor*, *supra*, 178 Cal.App.3d at p. 223.) The Court of Appeal agreed. It explained: "In the instant case, the only evidence produced by the People on the officers' use of a weapon showed that Officer Ritter held defendant at gunpoint. [Fn. omitted.] We have no doubt that a reasonable person surrounded by at least four officers, several vehicles and a helicopter, and held at gunpoint, was subject to restraints on his freedom of action comparable to those associated with a formal arrest. . . . We conclude defendant was 'in custody' and the officers were obligated to give him *Miranda* warnings before Detective Long effectively questioned him by showing him the suspicious items of property." (*Id*. at pp. 229-230.)

In so concluding, the court distinguished the case before it from one in which officers initially use weapons to effect an investigative stop, but reholster their weapons before questioning a suspect: "We caution we do not suggest that *Miranda* warnings must be given in each instance where police officers initially use weapons or other force to effect an investigative stop. For *Miranda* purposes, we think the crucial consideration is the degree of coercive restraint to which a reasonable citizen believes he is subject *at*

the time of questioning. Police officers may sufficiently attenuate an initial display of force, used to effect an investigative stop, so that no *Miranda* warnings are required when questions are asked. Thus, for example, a police officer may well act reasonably in drawing his gun while he approaches a citizen in an uncertain situation. However, having ascertained that no immediate danger justifies his display of his weapon, the officer may also reholster it. [Citation.] Assuming the citizen is subject to no other restraints, the officer's initial display of his reholstered weapon does not require him to give *Miranda* warnings before asking the citizen questions. As a practical matter, a contrary conclusion would imprudently endanger police officers by discouraging them from using protective measures reasonable in the circumstances to effect investigative stops. [Citation.]" (*Taylor*, *supra*, 178 Cal.App.3d at p. 230.)

Defendant contends that the present case is analogous to *Taylor*, but we do not agree. Unlike in *Taylor*, where officers questioned the defendant at gunpoint after pursuing him using lights and sirens, thus subjecting the defendant to an "'inherently compelling pressure' [citation] to respond to the questions" (*Taylor, supra*, 178 Cal.App.3d at p. 229), the officers in the present case reholstered their guns before asking defendant any questions. This case is much more analogous to the hypothetical case *Taylor* distinguished, in which a police officer "draw[s] his gun while he approaches a citizen in an uncertain situation" and then "reholster[s] it," than to *Taylor*.[3] (*Id*. at p. 230.) Further, the ratio of officers to suspects is much lower in the present case than it was in *Taylor*. In *Taylor*, the defendant was surrounded by "at least four officers, several vehicles and a helicopter" (*Taylor, supra*, at p. 229), while in the present case, there were four to six officers and four potential suspects.

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[3] Defendant contends that the officers "did not sufficiently attenuate their initial display of force before questioning appellant" because "no 'more than a couple of minutes' passed from the time everyone was detained and appellant was questioned." Nothing in *Taylor*, however, suggests that the length of time between the initial show of force and the questioning of a suspect is relevant to the *Miranda* analysis. Moreover, we believe that the reholstering of the officers' guns and the removal of defendant's handcuffs would suggest to her that she was not in custody, without regard to the amount of time that passed between those events and the subsequent questioning of defendant.

Defendant also analogizes the present case to *People v. Bejasa* (2012) 205 Cal.App.4th 26 (*Bejasa*). There, the defendant hit another vehicle head-on, seriously injuring his passenger. An officer (Maddox) asked the defendant what had happened, and defendant said his passenger had been thrown from the vehicle because she was not wearing a seatbelt. Maddox noticed that the defendant's eyes were bloodshot and he asked the defendant to sit on the curb. Maddox called for additional traffic officers and then resumed questioning the defendant. During this exchange, the defendant admitted he was on parole and consented to a search, which yielded two syringes, one of which contained liquid later determined to be methamphetamine. The "[d]efendant admitted he used the syringe to 'shoot up methamphetamine.'" (*Id*. at p. 33.) Maddox then handcuffed the defendant and placed him in the back of a police car, telling him he was being detained for a possible parole violation. Maddox did not give the defendant *Miranda* warnings.

Additional officers arrived shortly afterwards, removed defendant's handcuffs, and allowed him to get out of the police car. A second officer (Spates) then interviewed the defendant, asking him questions such as: "'What have you been drinking?,' 'How much?,' 'When did you start?,' 'When did you stop?,' 'Do you feel the effects of the alcohol?,' and 'Do you think that you should be driving?'" (*Bejasa*, *supra*, 205 Cal.App.4th at pp. 32-33.) In response to those questions, defendant made incriminating statements about his use of drugs. (*Id*. at p. 33.) Spates also administered a number of field sobriety tests, at the conclusion of which he advised defendant he was under arrest. (*Id*. at p. 34.)

On appeal, the defendant contended that his statements to Officer Spates were inadmissible because he had not been given a *Miranda* warning. (*Bejasa*, *supra*, 205 Cal.App.4th at p. 37.) The Court of Appeal agreed, concluding that a reasonable person would have felt "restrained in a manner normally associated with formal arrest." (*Ibid*.) It explained:

"First, prior to being restrained, defendant had incriminated himself in a number of ways. While talking to Officer Maddox, defendant admitted he was on parole.

Defendant then consented to a search of his person. That search yielded two syringes, one of which contained a liquid. Defendant further admitted that the syringes were used to 'shoot up methamphetamine.' At that point, Officer Maddox restrained defendant and informed him that he was being 'detained for a possible parole violation.'

"The fact that defendant offered several incriminating facts and was restrained so quickly thereafter weighs strongly in favor of a finding of custody. A reasonable person in defendant's position would know that possession of methamphetamine and related paraphernalia is a parole violation and a crime, and that arrest would likely follow.

"Second, the fact that Officer Maddox advised defendant he was being 'detained for a possible parole violation' also weighs in favor of custody. The word 'detained,' by itself, cannot abrogate the likelihood of custodial pressures. A reasonable person would probably not be comforted by the fact that the officer used the word 'detained' and mentioned only a 'possible' crime. Here, defendant had just admitted that he was on parole and had been using and carrying methamphetamine. In this context, a reasonable person would understand the officer's statement to mean that he or she was not free to leave.

"Even if the above circumstances are insufficient to constitute a level of restraint comparable to formal arrest, the physical restraint that followed crosses that boundary. Defendant was confronted with two of the most unmistakable indicia of arrest: he was handcuffed and placed in the back of a police car. A reasonable person, under these circumstances, would feel restrained to a '"degree associated with formal arrest."' [Citation.]" (*Bejasa*, *supra*, 205 Cal.App.4th at p. 37.)

We do not agree with defendant that the facts of the present case "are more compelling than" the facts in *Bejasa*. Although defendant is correct that she was both handcuffed *and* held at gunpoint, while the defendant in *Bejasa* was merely handcuffed, the events that preceded the handcuffing here were entirely different than those in *Bejasa*. In *Bejasa*, before an officer put the defendant in handcuffs, defendant acknowledged he was on parole, consented to a search, had syringes discovered on his person, and admitted using methamphetamine. A reasonable person in that defendant's position would know

that possession of methamphetamine and related paraphernalia is a parole violation and a crime, and thus would believe he was placed in handcuffs because he was under arrest. This reasonable belief was strengthened by the fact that as the officer handcuffed the defendant, he told him he was being "'detained for a possible parole violation.'" (*Bejasa*, *supra*, 205 Cal.App.4th at p. 37.) In the present case, in contrast, prior to being handcuffed, defendant did not make any incriminating statements and was not told she was being arrested or detained. Further, officers drew their weapons and placed defendant and the three members of the Lopez family in handcuffs only long enough to search them for weapons. Upon discovering defendant was unarmed, the officers immediately reholstered their guns and removed the defendant's handcuffs. Under these circumstances, a reasonable person would not have believed that the handcuffs were an indicia of arrest. Rather, in the context of the present case, a reasonable person would have understood the guns and handcuffs were utilized as a means to ensure the officers' safety while defendant and the Lopezes were searched for weapons.

For all of the reasons set forth above, we conclude the trial court did not err in denying defendant's motion to suppress her statements because she was not in custody for purposes of *Miranda* when she was questioned.

DISPOSITION

The judgment of conviction is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

SUZUKAWA, J.

We concur:

EPSTEIN, P. J. MANELLA, J.